

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

BEVERLY LONG, et al.,

Plaintiffs,

v.

PRIME TANNING CORP., et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)

Case No. 09CN-CV00422

FILED
JUL - 9 2009
MOLLY LIVINGSTON
CLERK OF CIRCUIT COURT

**ANSWER OF
DEFENDANTS PRIME TANNING CORP. AND PRIME TANNING CO., INC.**

Prime Tanning Corp. and Prime Tanning Co., Inc. (sometimes referred to as "these defendants"), by and through their counsel, hereby deny each and every allegation of Plaintiffs' First Amended Petition for Damages not specifically admitted herein below:

Parties

1. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 1 of the First Amended Petition for Damages and therefore deny the same.

2. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 2 of the First Amended Petition for Damages and therefore deny the same.

3. These defendants admit that Defendant Prime Tanning Corp. is a Missouri corporation, and that Prime Tanning Corp. is a wholly owned subsidiary of Prime Tanning Co., Inc. These defendants deny the remaining allegations contained in ¶ 3 of the First Amended Petition for Damages.

4. These defendants admit that Defendant Prime Tanning Co., Inc. is a Maine Corporation. These defendants deny the remaining allegations contained in ¶ 4 of the First Amended Petition for Damages.

5. These defendants admit the allegations contained in ¶ 5 of the First Amended Petition for Damages.

6. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 6 of the First Amended Petition for Damages and therefore deny the same.

Jurisdiction and Venue

7. These defendants deny the allegations contained in ¶ 7 of the First Amended Petition for Damages.

8. These defendants deny the allegations contained in ¶ 8 of the First Amended Petition for Damages.

Facts

9. These defendants admit that Prime Tanning Corp., a wholly owned subsidiary of Prime Tanning Co., Inc., formerly owned and operated a leather tanning facility at 205 Florence Road in St. Joseph, Missouri and deny the remaining allegations contained in ¶ 9 of the First Amended Petition for Damages.

10. These defendants deny the allegations contained in ¶ 10 of the First Amended Petition for Damages.

11. These defendants deny the allegations contained in ¶ 11 of the First Amended Petition for Damages.

12. These defendants deny the allegations contained in ¶ 12 of the First Amended Petition for Damages.

13. These defendants deny the allegations contained in ¶ 13 of the First Amended Petition for Damages.

14. These defendants deny the allegations contained in ¶ 14 of the First Amended Petition for Damages.

15. These defendants deny the allegations contained in ¶ 15 of the First Amended Petition for Damages.

16. These defendants deny the allegations contained in ¶ 16 of the First Amended Petition for Damages.

17. These defendants deny the allegations contained in ¶ 17 of the First Amended Petition for Damages.

18. These defendants deny the allegations contained in ¶ 18 of the First Amended Petition for Damages.

19. These defendants deny the allegations contained in ¶ 19 of the First Amended Petition for Damages.

20. These defendants deny the allegations contained in ¶ 20 of the First Amended Petition for Damages.

21. These defendants deny the allegations contained in ¶ 21 of the First Amended Petition for Damages.

22. These defendants deny the allegations contained in ¶ 22 of the First Amended Petition for Damages.

COUNT I
(Negligence)

23. These defendants repeat and reallege their answers to the allegations ¶¶ 1 through 22 of the First Amended Petition for Damages.

24. These defendants deny the allegations contained in ¶ 24 of the First Amended Petition for Damages.

25. These defendants deny the allegations contained in ¶ 25 of the First Amended Petition for Damages.

WHEREFORE, these defendants request that the First Amended Petition for Damages be dismissed, that Plaintiffs take nothing thereby, and that these defendants be awarded their costs, attorneys fees and expenses, and such other further relief as may be just and equitable.

COUNT II
(Strict Liability)

26. These defendants repeat and reallege their answers to the allegations ¶¶ 1 through 26 of the First Amended Petition for Damages.

27. These defendants deny the allegations contained in ¶ 27 of the First Amended Petition for Damages.

28. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 28 of the First Amended Petition for Damages and therefore deny the same.

29. These defendants deny the allegations contained in ¶ 29 of the First Amended Petition for Damages.

30. These defendants deny the allegations contained in ¶ 30 of the First Amended Petition for Damages.

31. These defendants deny the allegations contained in ¶ 31 of the First Amended Petition for Damages.

32. These defendants deny the allegations contained in ¶ 32 of the First Amended Petition for Damages.

WHEREFORE, these defendants requests that the First Amended Petition for Damages be dismissed, that Plaintiffs take nothing thereby, and that these defendants be awarded their costs, attorneys fees and expenses, and such other further relief as may be just and equitable.

Affirmative Defenses

1. Plaintiffs' First Amended Petition for Damages fails to state a claim upon which relief may be granted.

2. Plaintiffs' claims are barred by the applicable statute of limitations.

3. Plaintiffs' claims are barred by the doctrine of laches, waiver and estoppel.

4. Venue is improper in this Court.

5. Plaintiffs have failed to join all the parties necessary for a just adjudication of this matter in their First Amended Petition for Damages.

6. Plaintiffs' claims for damages are barred in whole or in part by their failure to mitigate their damages.

7. These defendants deny the existence, nature, extent, and duration of Plaintiffs' alleged damages.

8. Any injuries or damages sustained by Plaintiffs, which these defendants expressly deny, were directly and proximately caused or contributed to by the negligence or fault of other persons or entities over whom these defendants have no control and for whom they he bears no legal responsibility.

9. Any injuries or damages sustained by Plaintiffs, which these defendants expressly deny, were not caused or contributed by any negligence or fault on the part of these defendants.

10. The negligence or fault of the parties to this case should be compared by the trier-of-fact, and any negligence or fault apportioned to Plaintiffs should act to bar any recovery or

reduce any recovery in direct proportion to any such assessment of fault, all in accordance with the laws of the State of Missouri.

11. These defendants cannot be held jointly and severally liable for the amount of any judgment rendered against the defendants in this case unless these defendants are found to bear fifty-one percent (51%) or more of fault. If these defendants are found to bear less than fifty-one percent (51%) of fault, then these defendants shall only be responsible for the percentage of judgment for which these defendants are determined to be responsible by the trier-of-fact.

12. These defendants can only be severally liable for the percentage of punitive damages, if trier-of-fact attributes any, for which fault to these defendants.

13. These defendants are entitled to a set-off or credit for any judgment, settlement, or proceeds paid to Plaintiffs involving other defendants, other defendants' representatives, or third-parties.

14. These defendants expressly request that Plaintiffs' claims be reduced pursuant to § 537.060 RSMo in the event Plaintiffs have previously settled or will settle any or their claims asserted in this lawsuit against any other defendant, any other party (person or entity), any other joint tortfeasor (person or entity), or any other person or entity liable for Plaintiffs' damages, if any, arising out of the incident that is the subject of this litigation.

15. Plaintiffs' claims are barred so far as the alleged product complied with the state of the art at the time it was manufactured as defined by law.

16. The alleged product of which Plaintiffs complain was not defective.

17. If Plaintiffs were exposed to any alleged harmful product connected to these defendants, which is specifically denied, then such exposure was inconsequential or de minimis, thus barring any recovery by the Plaintiffs.

18. If Plaintiffs sustained the injuries alleged in the petition, which is denied, there was an intervening, superseding cause or causes leading to the alleged injuries, and therefore, any act or omission on the part of these defendants was not the proximate cause and/or competent producing cause of the alleged injuries.

19. Plaintiffs' claims are barred because the alleged dangerous nature of the alleged product was not known and could not reasonably be discovered at the time the product was placed in the stream of commerce.

20. Plaintiffs' purported claims are barred because, at all relevant times, these defendants did not create a dangerous or unsafe condition on farmland wherein fertilizer was spread.

21. These defendants state that to the extent the alleged harmful products were altered from their original condition after said alleged products left these defendants' control, said alteration bars or limits these defendants' liability.

22. Plaintiffs' claims are barred or limited by any misuse of the alleged product.

23. These defendants were at all times in full compliance with all applicable industry standards regarding the manufacture, sale, or distribution of products to which Plaintiffs allegedly were exposed.

24. For other and further answer in defense to Plaintiffs' First Amended Petition for Damages, Plaintiffs' claims for punitive damages should be stricken and dismissed in that they violate both the Missouri Constitution and the United States Constitution as follows:

a. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to these defendants of the potential repercussions of his alleged conduct and are subject to the unbridled discretion

of the jury, thereby denying due process under the Missouri Constitution, Article 1, Section 10.

b. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to these defendants of the repercussions of his alleged conduct and are subject to the unbridled discretion of the jury, thereby denying due process under the Fifth and Fourteenth Amendments of the United States Constitution.

c. Plaintiffs' claims for punitive damages are criminal in nature and the rights given these defendants in criminal proceedings under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution are applicable.

d. Plaintiffs' claims for punitive damages are criminal in nature and the rights given these defendants in criminal proceedings under the Missouri Constitution, Article 1, Sections 18A, 19, 21, and 22A are applicable.

e. Plaintiffs' claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Eighth Amendment of the United States Constitution.

f. Plaintiffs' claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Missouri Constitution, Article 1, Section 21.

g. Plaintiffs' claims for punitive damages constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

h. Plaintiffs' claims for punitive damages constitute cruel and unusual punishment in violation of the Missouri Constitution, Article 1, Section 21.

i. Plaintiffs' claims for punitive damages discriminate against these defendants and constitute a denial of equal protection under the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that defendant's wealth or net worth may be requested to be considered by the jury in determining the amounts of any such damage awards.

j. Plaintiffs' claims for punitive damages discriminate against these defendants and constitute a denial of equal protection under the law in violation of Article 1, Sections 2 and 10 of the Missouri Constitution.

k. Plaintiffs' claims for punitive damages constitute a subsequent imposition of punitive-type damages against these defendants and they cannot protect against multiple punishments for the same alleged conduct or wrong, thereby denying due process under Article 1, Sections 2 and 10 of the Missouri Constitution.

l. Missouri Law does not provide an adequate procedure for the determination of damages in the nature of aggravating circumstances or punitive damages in violation of the equal protection and substantive and procedural due process requirements of both the Missouri Constitution and the United States Constitution and in violation of the United States Supreme Court decisions in *Pacific Mutual Insurance Company vs. Haslip*; *BMW of North American, Inc. vs. Gore*; *State Farm v. Campbell*.

m. The granting of relief requested by Plaintiffs would be unconstitutional under the Missouri and the United States constitutions in that it would violate due process and equal protection guarantees, place an undue burden on interstate commerce, and violate constitutional proscriptions against excessive fines.

25. To the extent that any defense arising out of the Missouri Tort Reform Act accrues to the benefit of these defendants, these defendants hereby reserves the right to assert the same should the facts warrant.

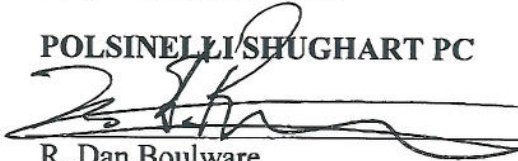
26. These defendants specifically reserve the right to plead additional affirmative defenses as they become known and available throughout pendency of this case.

WHEREFORE, having answered Plaintiffs' First Amended Petition for Damages, defendants Prime Tanning Corp. and Prime Tanning Co., Inc. ask that judgment be entered against Plaintiffs, and in favor of these defendants, for costs, attorneys' fees and expenses, and for such other relief the Court deems just and appropriate.

Dated: July 9, 2009

Respectfully submitted,

POLSINELLI SHUGHART PC



R. Dan Boulware MO #24289

DBoulware@polsinelli.com

Todd H. Bartels MO #45677

TBartels@polsinelli.com

Seth C. Wright MO #51830

SCWright@polsinelli.com

3101 Frederick Avenue

St. Joseph, MO 64506

Phone: (816) 364-2117

Fax: (816) 279-3977

Dennis J. Dobbels MO #32378

DDobbels@polsinelli.com

Twelve Wyandotte Plaza

120 West 12th Street

Kansas City, MO 64105

Phone: (816) 421-3355

Fax: (816) 374-0509

Melissa A. Hewey

DRUMMONDWOODSUM

84 Marginal Way, Suite 600

Portland, ME 04101

Phone: (207) 772-1941

Fax: (207) 772-3627

mhewey@dwmlaw.com

ATTORNEYS FOR DEFENDANTS

PRIME TANNING CORP. and

PRIME TANNING CO., INC.

CERTIFICATE OF SERVICE

I certify that on this 9th day of July, 2009, copies of the foregoing were transmitted via first class U.S. mail, postage prepaid, to:

Thomas P. Cartmell
Brian J. Madden
Thomas L. Wagstaff
WAGSTAFF & CARTMELL LLP
4740 Grand Avenue, Suite 300
Kansas City, MO 64112

Thomas V. Girardi
GIRARDI KEESE
1126 Wilshire Boulevard
Los Angeles, CA 90017-1904

Stephen Griffin
W. Mitchell Elliott
Troy Dietrich
GRIFFIN DIETRICH ELLIOTT
416 N. Walnut
Cameron, MO 64429

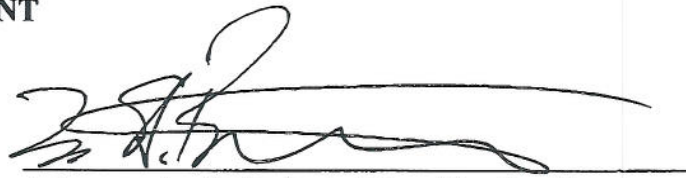
ATTORNEYS FOR PLAINTIFFS

W.C. Blanton
Stephen J. Torline
HUSCH BLACKWELL SANDERS LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112

**ATTORNEYS FOR DEFENDANT
NATIONAL BEEF LEATHERS CO. LLC**

Scott R. Ast
Todd A. Scharnhorst
SCHARNHORST AST & KENNARD, P.C.
1000 Walnut, Suite 1550
Kansas City, MO 64106

**ATTORNEYS FOR DEFENDANT
RICK REAM**


Attorneys for Defendants Prime Tanning Corp.
and Prime Tanning Co., Inc.